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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,247	09/10/2003	Richard A. Briesemeister	12821.5USC2	5344
7590	05/03/2004		EXAMINER	
Karen A. Fitzsimmons MERCHANT & GOULD P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			KOVACS, ARPAD F	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/660,247	RICHARD A. BRIESEMEISTER
Examiner	Art Unit	
Árpád Fábián Kovács	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

P riod for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 September 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-16 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/15/2003.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: ____ .

DETAILED ACTION

Double Patenting

1.A. Claims 1-6, 9-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6463725. Although the conflicting claims are not identical, they are not patentably distinct from each other because Patent No. 6463725, also recites pivoting plates, retractable conveyor, biasing spring, sealing arrangement, sensor, sensor bar. Claims reciting the linkage assembly (cl. 7, 13) were not thought to be recited in the prior patent, as a result were not rejected.

Specification

1.B. The abstract of the disclosure is objected to because the following phrase should be revised: "is disclosed" & "in one particular embodiment, the disclosure ..."; and it appears that lines 10-17 are substantially a repeat thus redundant of lines 1-9. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Visser (6178730, cited by the Applicant), in view of Scott et al (6360518).

Visser discloses a harvester for gathering produce from one or more plants, and as shown in the marked up drawings below for greater clarity, the harvester comprising:

a drive mechanism (74) for advancing the harvester along a first direction (102; generally shown in fig 2);

a retractable conveyor (80) positionable between a first & second position to engage the plants (col 3, ln 46);

a sealing arrangement (col. 3, ln 53-54);

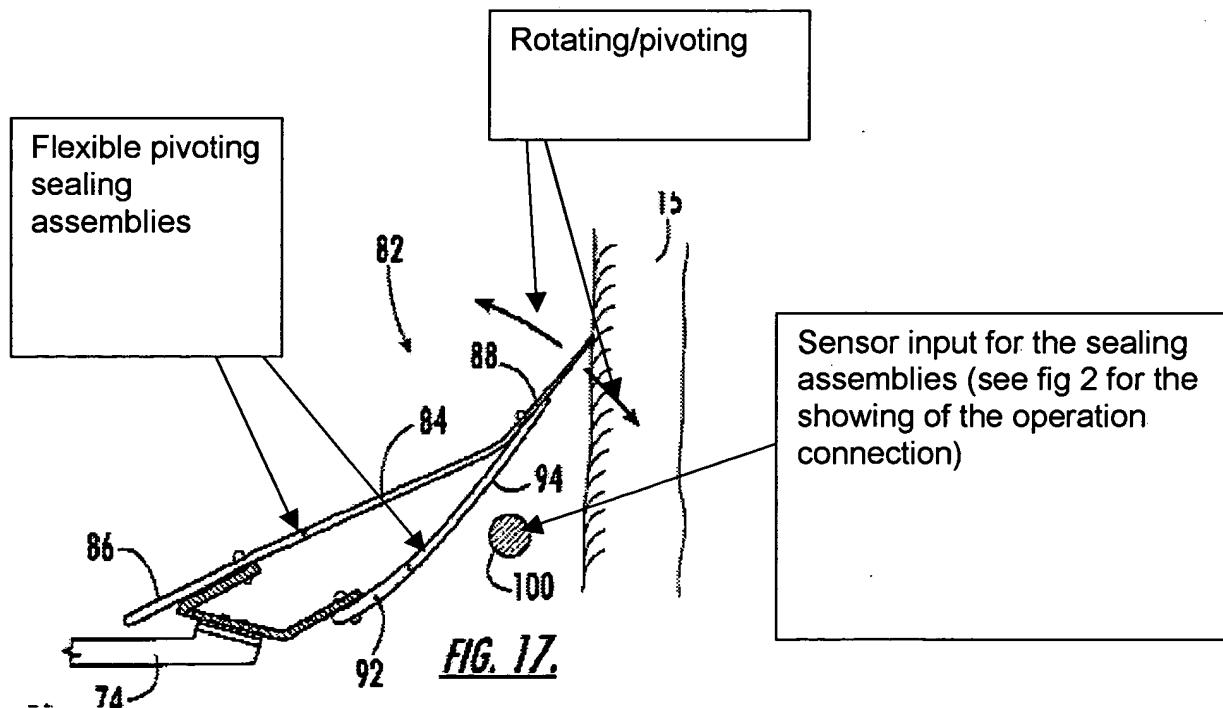
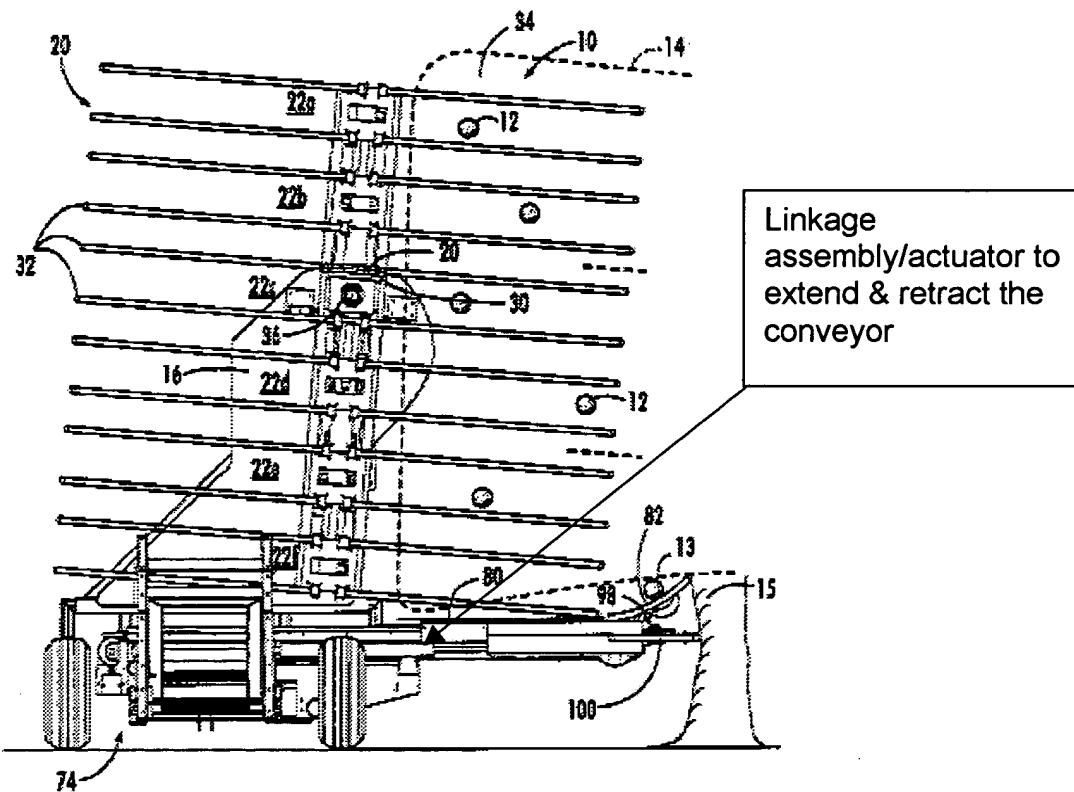
a seal (82; col 3, ln 52);

a sensor (98) is operable with positioning means for positioning the conveyor and seal at a desirable distance from the plant (col 3, ln 56-57);

a sensor bar (100) extending from a distal end of the conveyor (col 3, ln 59);

overlapping sheets (84 & 94) (in re cl 3, 4, 18-19);

as disclosed in col 7, ln 6-12, the plates or sheets are under tension or biased by inherent spring like element for providing desirable seal that is sufficiently flexible for sealing engagement with the plant (fig 18).



Visser does not disclose/show that ref 82 are pivoting, biasing plates, however Scott shows that such plates maybe used at ref 82 (in Visser):

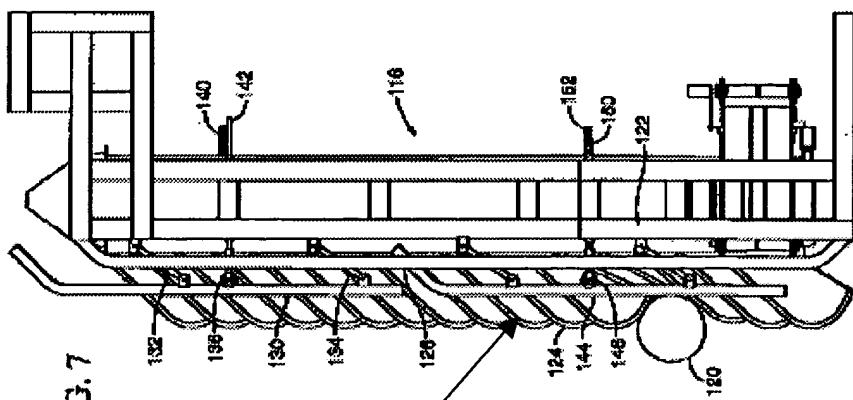


FIG. 7

As Scott shows the pivoting plates are overlapping and biased back into position after the tree trunk is engaged

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sealing arrangement (ref 82) of Visser with the pivoting & biased plates of Scott, since it is well known as demonstrated by Scott to use plates for engaging the tree trunk or plants.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács
Primary Examiner
Art Unit 3671

ÁFK